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Nos. 463 and 548

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

THE UNITED STATES OF AMERICA

v.

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

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v.

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

[Treasury Department, Bureau of War-Risk Insurance, Division of Military and Naval Insurance, Bulletin No. 1]

TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE

I, William C. De Lanoy, Director of the Bureau of War-Risk Insurance in the Treasury Depart-

ment, pursuant to the provisions of section 402 of an act "to amend 'An act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

1. Insurance will be issued for any of the following aggregate amounts upon any one life:

Amount	Converted into monthly installments of—	Amount	Converted into monthly installments of—
$1,000	$5.75	$6,000	$34.50
$1,500	8.63	$6,500	37.38
$2,000	11.50	$7,000	40.25
$2,500	14.38	$7,500	43.13
$3,000	17.25	$8,000	46.00
$3,500	20.13	$8,500	48.88
$4,000	23.00	$9,000	51.75
$4,500	25.88	$9,500	54.63
$5,000	28.75	$10,000	57.50
$5,500	31.63		

Which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for 240 months, or if death occur following such disability, for a sufficient number of months to make 240 in all including months of disability already paid for, in both cases except as otherwise provided.

2. The insurance is issued at monthly rates for the age (nearest birthday) of the insured when the insurance goes into effect, increasing annually upon the anniversary of the policy to the rate for an age one year higher, as per the following table of rates:

[Here follows a table of rates.]

Rates at ages higher or lower will be given on request.

The insurance may be continued at these increasing term rates during the war and for not longer than five years after the termination of the war, and may be continued thereafter without medical examination if the policy be converted into a form selected before the expiration of such five years by the insured from the forms of insurance which will be provided by the bureau, provided that premiums are paid therefor at net rates computed by the bureau according to the American Experience Table of Mortality and interest at 3½ per cent per annum.

3. That the insurance has been granted will be evidenced by a policy or policies issued by the bureau, which shall be in the following general form (which form may be changed by the bureau from time to time, provided that full and exact terms and conditions thereof shall not be altered thereby):

[Form of policy for $5,000]

MILITARY AND NAVAL INSURANCE POLICY

No. 1

Amount, $5,000 Age, 25
Monthly installments, $28.75

THE UNITED STATES OF AMERICA

TREASURY DEPARTMENT

BUREAU OF WAR-RISK INSURANCE

Under the authority granted by Congress in an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved

September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ------ day of ------, 19--, John Doe, of Illinois, private,
(Name, State of residence, and designation of the insured)
Company A, Third Infantry, conditioned upon the payment of premiums as herein provided for the principal amount of $5,000, converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum) payable—

To the insured, of he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or, if any such installments have been paid, then for a number of months sufficient to make 240 in all:

To Sarah Doe, wife of the insured:

If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any

above-designated beneficiary is or becomes disqualified or does not survive the insured, the insurance (or if any above-designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.

If the insured became totally and permanently disabled before this policy was applied for, it shall nevertheless be effective as life insurance, but not as insurance against such disability.

This policy is not assignable, and payments thereunder to the insured or a beneficiary are not subject to claims of creditors of the insured or beneficiary.

The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.

Upon the written request of the insured, accompanied by this policy for indorsement, or after his/her death, upon request of a beneficiary at the time of making claim, the insurance payable to any beneficiary may be converted into installments of reduced amounts payable for 240 months certain and for as much longer as such beneficiary shall survive, such installments to be computed in accordance with the American Experience Table of Mortality and 3½ per cent interest.

Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the

insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.

If the age of the insured has been misstated, the amount of insurance shall be adjusted at the amount not in excess of $10,000 which the premium actually paid would purchase at the insured's attained age.

During the present war and for not more than five years thereafter, or until the earlier conversion of this policy, as hereinafter provided, the monthly premiums shall be in accordance with the following table of rates, increasing at each anniversary of the policy to the rate for his/her then attained age:

Table of premiums for $5,000

[Ages 15 to 65]

Attained age	Monthly rate	Attained age	Monthly rate
15	$3.15	41	$4.10
16	3.15	42	4.20
17	3.15	43	4.33
18	3.20	44	4.45
19	3.25	45	4.60
20	3.25	46	4.75
21	3.25	47	4.95
22	3.25	48	5.15
23	3.25	49	5.40
24	3.30	50	5.70
25	3.30	51	6.00
26	3.35	52	6.35
27	3.35	53	6.75
28	3.40	54	7.20
29	3.45	55	7.65
30	3.45	56	8.20
31	3.50	57	8.80
32	3.55	58	9.50
33	3.60	59	10.25
34	3.65	60	11.05
35	3.70	61	12.00
36	3.75	62	13.00
37	3.80	63	14.10
38	3.85	64	15.35
39	3.95	65	16.75
40	4.05		

Not later than five years after the war this policy, if written request be made to the bureau therefor, accompanied by this policy, will be converted without medical examination into any form of insurance selected from among those that may be prescribed by regulations of the bureau. Such converted insurance will be at net premiums, computed in accordance with the American Experience Table of Mortality and 3½ per cent interest per annum and will provide for cash, loan, paid-up, and extended insurance values.

Wherefore the United States of America has caused this policy to be signed by the Secretary of

the Treasury and by William C. De Lanoy, the Director of the Bureau of War-Risk Insurance, and countersigned by the registrar or an assistant registrar of the bureau.

W. G. McAdoo,
Secretary of the Treasury.

William C. De Lanoy,
Director of the Bureau of War-Risk Insurance.

Countersigned at Washington, D. C., this------ day of ------, 19--.

------ ------,
Registrar.

4. Persons entitled to apply for this insurance are—

(1) A commissioned officer (including a warrant officer) in active service in the military or naval forces of the United States.

(2) Any person, male or female, enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, including noncommissioned and petty officers and members of training camps authorized by law.

The term " military or naval forces " means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy.

(3) Any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) while employed in active service under the War Department or Navy Department, respectively.

5. Insurance may be applied for in favor of one or more of the following persons with sum of $500 or a multiple thereof for each beneficiary, the aggregate not exceeding the limit of $10,000 and not less than $1,000 upon any one life:

Husband or wife.

Child, including legitimate child; child legally adopted before April 6, 1917, or more than six months before enlistment or entrance into or employment in active service, whichever date is the later; stepchild, if a member of the insured's household; illegitimate child, but, if the insured is his father, only if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December 31, 1917, shall have been born in the United States or in its insular possessions.

Grandchild, meaning a child, as above defined, of a child as above defined.

Parent, including father, mother, grandfather, grandmother, stepfather, and stepmother, either of the insured or of his/her spouse.

Brother or sister, including of the half blood as well as of the whole blood, stepbrothers and stepsisters and brothers and sisters through adoption.

Unless other designation is made by the insured, such person or persons, within the permitted class of beneficiaries, as would under the laws of the place of residence of the insured be entitled to his personal property in case of intestacy shall be deemed designated as the beneficiary or beneficiaries to whom shall be paid any installments remaining unpaid upon the death, or disqualification

under the provisions of the act, of any named beneficiary.

In case the applicant does not desire the premium to be deducted from his/her pay (or his/her deposit) he/she should so elect in writing at the time of making application; but if no election is made it shall have the effect to provide for such deduction from his/her pay, or if such pay be insufficient, any balance from his/her deposit.

7. Applications for insurance are to be made upon the blanks provided by the bureau, but any writing sufficiently identifying the applicant and specifying the amount of insurance shall be deemed sufficient. Upon request of the bureau, however, the applicant shall fill out and sign the proper blank as of the original date.

8. If a signed writing requesting insurance for less than $4,500 is mailed or delivered before the 12th day of February, 1918, to the Bureau of War-Risk Insurance, Washington, D. C., or to any branch thereof or to any officer of the United States authorized to receive the same, such insurance, in the absence of other specification in such writing, shall be and be deemed applied for and the contract made on such 12th day of February, 1918, the provisions of section 401 as to automatic insurance meanwhile continuing in full force; if so mailed or delivered on or after such day, or if for $4,500 or more, though mailed or delivered before such day, the insurance shall, in the absence of other specification in such writing, be and be deemed applied for and the contract made on the day of mailing or delivery.

9. These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

WILLIAM C. DE LANOY,
Director of the Bureau of War-Risk Insurance.

WASHINGTON, D. C.
October 15, 1917.

The Act of October 6, 1917 (c. 105, 40 Stat. 398, 409, 410), provides in part as follows:

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable may be provided for in the contract of insurance or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the in-

sured in case his total and permanent disability continues more than two hundred and forty months. * * *

* * * * *

SEC. 403. That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

Section 17 of the Act of March 4, 1925 (c. 553, 43 Stat. 1302, 1311), provides in part as follows:

* * * wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its

judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid.

APPROPRIATIONS

The following appropriations were made solely for the payment of benefits under yearly term war-risk life insurance accruing for the year in which the appropriation was made:

By Act of Oct. 6, 1917 (40 Stat. 398, 400)	$23,000,000
By Act of Feb. 13, 1923 (42 Stat. 1227, 1244)	90,000,000
By Act of Mar. 4, 1923 (42 Stat. 1527, 1530)	13,235,000
By Act of June 7, 1924 (43 Stat. 521, 533)	88,000,000
By Act of Mar. 3, 1925 (43 Stat. 1198, 1212)	98,000,000
By Act of Mar. 3, 1926 (44 Stat. 161, 165)	27,000,000
By Act of Apr. 22, 1926 (44 Stat. 305, 320)	123,000,000
By Act of Feb. 11, 1927 (44 Stat. 1069, 1085)	114,000,000
By Act of Dec. 22, 1927 (45 Stat. 2, 7)	8,920,000
By Act of May 16, 1928 (45 Stat. 573, 588)	106,750,000
By Act of Feb. 20, 1929 (45 Stat. 1230, 1247)	115,250,000
By Act of Mar. 4, 1929 (45 Stat. 1623, 1628)	7,500,000
Total	814,655,000

Benefits under the yearly term policies will continue for many years, but there will be little income, as the Annual Report of the Director of the Veterans' Bureau for 1929 (p. 22) shows that on June 30, 1929, only 226 such policies were then in force.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

MARCH, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

FILE COPY

FEB

CHARLES E.

In the
Supreme Court of the United States

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR MATTIE PUCKETT WORLEY, ADMINISTRATRIX, ET AL.

CLARENCE T. SPIER,

CHARLES BATTELLE,

Attorneys for Plaintiff and Intervener.

COCKLE PRINTING CO., OMAHA

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In the
Supreme Court of the United States

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR MATTIE PUCKETT WORLEY, ADMINISTRATRIX, ET AL.

STATEMENT OF THE CASE

This case is before the Court on certificate from the United States Circuit Court of Appeals for the Eighth Circuit. The cause of action is one arising on a policy of war risk insurance originating, and tried by a jury, in the District Court of the United States, Nebraska Division. From a judgment in the District Court in favor of the plaintiff, the United States, defendant, prosecuted

an appeal to the Circuit Court of Appeals which court has duly certified to this court four questions of law predicated upon a statement of the case and recited in Pages 1 to 4 of the certificate. Briefly summarized the facts set forth therein (R. 1-4) are as follows:

The assured, Emmet A. Puckett, was duly enlisted in the army of the United States and served therein until discharged on May 18, 1918. While in such service he procured a war risk insurance contract in the sum of $10,000.00 pursuant to the act of October 6, 1917 (40 Stat. 398). This contract provided for the payment of $57.50 to the beneficiary thereof in the event of death or to the insured upon total and permanent disability during the existence of the contract. Claim was duly presented to the Veterans' Bureau for and on behalf of the insured during his lifetime, this claim being rejected by the Bureau on December 29, 1926. The insured veteran died on January 7, 1927. Thereafter on April 23, 1927, Mattie Puckett Worley, as administratrix brought suit to recover on the contract of insurance pursuant to the provisions of Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445, 45 Stat. 964) seeking to recover, on the ground of permanent and total disability of the insured from the date of his discharge from the military service, insurance payments due under said contract from the date of discharge, March 18, 1918, to January 7, 1927, the date of the soldier's death. (R. 2). Thereafter on July 6, 1927, Mattie Puckett Worley, as beneficiary, in compliance with an order of court duly made upon motion of the United States, filed her petition of intervention in which, as beneficiary, she claimed

any balance due her as such under said insurance contract. (R. 2). The action was duly tried and the jury returned a verdict in favor of the administratrix in the sum of $6095.00, being the amount due by reason of the monthly payments to the date of the death of the insured and a verdict in favor of the intervening beneficiary designated in the policy for $3905.00. The District Court entered judgment for the above amounts. Subsequently, on December 28, 1928, the District Court entered a supplemental judgment wherein interest, at the rate of 7% per annum was allowed to the plaintiff in the sum of $2655.99; to the intervener interest at the rate of 7% per annum on unpaid payments due her to October 31, 1928, (being the date of the rendition of the original judgment), in the sum of $84.36. The supplemental judgment further providing that thereafter the balance due her as beneficiary be paid at the rate of $57.50 per month, with interest on the judgment at the same rate, and costs. (R. 2-3).

The United States appealed to the Circuit Court of Appeals for the Eighth Circuit.

———o———

QUESTIONS CERTIFIED

The questions presented as stated in the certificate are as follows:

I.

Upon the facts stated does the United States as a matter of law stand in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incidents of suit in such business?

II.

In case of a finding in favor of plaintiff and intervener may judgment be entered against the United States for amounts of insurance installments maturing after the action was instituted?

III.

In case of a finding and judgment in favor of the plaintiff and intervener is interest allowable against the United States upon the monthly installments from the date they are found to be due?

IV.

In case of a finding and judgment in favor of plaintiff and intervener may costs be awarded generally against the United States upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

———o———

BRIEF OF THE ARGUMENT

I.

With reference to the first questions certified, it is our contention that the United States stands in the position of one who has gone into the business of insurance and, therefore, must be assumed to have accepted the ordinary incidents of suit in such business.

Act of September 2, 1914, 38 Stat. 711.

Act of October 6, 1917, 40 Stat. 398.

Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, 45 S. Ct. 211.

II.

Judgment may be entered against the United States for the amounts of insurance installments maturing after the action was instituted. The rights of all parties to the insurance contract were definitely settled and the contract itself matured with the death of the assured.

Cumings vs. United States, 34 Fed. 2nd 384 (D. C.).

The stated beneficiary of the policy was entitled to and she received judgment for the balance due thereunder. Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445) provides:

> "All persons having or claiming to have an interest in such insurance may be made parties to such suit."

The United States by motion which was duly sustained by the Court required the beneficiary to intervene and become a party to the action that her rights might be adjudicated. It is our contention that this having been done the United States cannot complain of the adjudication they sought and required. The supplemental judgment complained of, in so far as it pertained to the payment of future installments, imposed no obligation upon the United States in excess of the obligation incurred by the insurance contract and specifically set forth that payments in the future should be made in the manner and on the terms set forth in said contract. (R. 3).

III.

Interest is allowable against the United States upon all monthly installments from the date they are found to be due until paid. This Court has heretofore passed upon the question of the allowance of interest on war risk insurance and has answered affirmatively the question herein propounded.

Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, 45 S. Ct. 211.

The Bureau of War Risk Insurance was authorized by the Act of September 2, 1914, (38 St. 711) to insure marine risks against the hazards of war. This act was amended by the Act of October 6, 1917 (40 St. 409) to provide for the granting of life and disability insurance to those in the military service of the United States, then a combatant nation. The statutory provisions authorizing and stipulating the forms of both marine and life insurance are similar in form and parallel in import; create and provide for a varied activity in the field of insurance, and create identical rights and liabilities thereunder.

Standard Oil Company vs. United States, supra.

Gianakouras vs. United States (D. C.), 33 Fed. 2nd 936.

The United States by particular legislation became engaged in the business of insuring various risks from the hazards of war. Interest should be allowed upon all claims for insurance arising under and by virtue of the business entered into, free from any discrimination, distinction and differentiation, not particularly stated by

statute, between hazards protected by such duly authorized insurance contracts.

The monthly installments due under the contract, and unpaid, constituted a definite debt of the United States particularly established as such by statute. Failure to pay these installments as and when due constituted a detention of money for which the plaintiff is entitled to complete remuneration equal to the value of the money so retained as of the date when eventually paid.

United States vs. The Thekla, 266 U. S. 328.

United States vs. The Neustra Senora, 108 U. S. 92.

The Pacquette Habana, 189 U. S. 453.

IV.

The costs may be awarded generally against the United States upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau available for that purpose.

44 Stat. Sec. 870, Page 495 provides

"In case of an adverse decision such costs as by law are taxable against the United States or against the party acting by direction as aforesaid shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted."

State Bank vs. U. S. 16 Fed. 2nd. 439 (C. C. A. 6th) Certiorari denied, 274 U. S. 737.

ARGUMENT

I.

The United States as a matter of law stands in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incident of suit in such business.

It has been pointed out that this question is argumentative and does not present a pure question of law requiring an answer by this Court. We contend that this question is of the utmost importance in establishing the relationship between the United States and those asserting rights under and by reason of war risk insurance contracts. The legal status of the United States with reference to the question can be clearly defined from and by an analysis of the legislative enactments creating and authorizing the machinery necessary and incident to the transaction of all matters incident to the proper protection of the risks contemplated and stipulated in the legislation itself.

The Bureau of War Risk Insurance was created by legislative enactment, the original act being of September 2, 1914, (38 Stat. 711) and pertained only to the insurance of marine risks being designed for the protection of American shipping from the hazards of the European war. The scope of the Bureau's activity was subsequently enlarged after the entry of the United States into the war and by congressional enactment of October 6, 1917, (40 Stat. 409) insurance on those in the military service of the United States was authorized contemplating the hazards of death and total and permanent disability. This legislation was in the form of an amendment to the original act and was a part thereof, merely enlarging the

activity of such institution which had already been created. Section 402 of Article 4, Act as amended October 6th, provides generally as to the form of the life and disability policy to be issued; states how any accruing loss shall be paid; provides for loan values, dividends, etc., uses the terms "to the assured and the beneficiaries"; and further provides, "all calculations shall be based upon the American Experience Table of Mortality and interest at 3½ per centum per annum." Section 404 of the same act provides for the duration or the continuation of what is designated as term insurance and figures the date in the future upon which all term insurance shall be converted into such usual forms of insurance as may be provided. A study of the original act as amended disclosed the free use of terms peculiar to the insurance business. The contract is freely called a contract of insurance. The assured is designated as such, as are the beneficiaries. The premium to be charged is so called and by very particular language is authorized to be fixed by actuarial deductions specifically based upon the American Experience Table of Mortality. Such briefly is the authority upon which the structure of war risk insurance was erected and we contend that a business was created to be operated as such, along the well recognized and accepted principles pertaining to the operation of a highly specialized business. We believe that it is pertinent to the question to point out to the Court the present day status of the United States Veterans' Bureau of which the department or Bureau of War Risk Insurance is now a part. The report to Congress of the United States Veterans' Bureau for the year ending June 30, 1929, discloses some facts which we consider have a bearing upon

the question here presented. Page 20 of this report states the following:

> "The insurance activities of a regional office are similar in many respects to those of a branch office of a commercial insurance company. This step in the Bureau's program of cooperation and service has made possible closer connection with the government life insurance policy holders and will enable the Bureau to conduct its insurance business with a standard of service comparable to that of the leading life insurance companies."

Plaintiff and intervener cannot concur in the statement that *White vs. United States*, 270 U. S. 175, asks the question as to whether or not the United States entered the insurance business in the negative. The *White* case, we believe, went no further than to hold that the contract of insurance was subject to change as between the original parties thereto and, therefore, that a volunteer with rights thereunder could not object when and in the event such changes were made. It is submitted that as a matter of law the United States entered the business of insurance and that any incidents thereto not particularly excepted can be, as a matter of law, deemed to have been assumed and the United States by reason thereof placed in the position of any other litigant engaged in such business.

II.

In case of a finding in favor of plaintiff and intervener judgment may be entered against the United States for the amounts of insurance installments maturing after the action was instituted.

This action was a suit on a contract of war risk life insurance authorized by Section 19 of the World War

Veterans' Act, (U. S. C. Title 38, Sec. 455) and was instituted by the plaintiff, as administratrix, seeking to recover insurance payments alleged to be due from April 1, 1918, to and including January 1, 1927. Section 19 provides:

> "All persons having or claiming to have an interest in such insurance may be made parties to such suit, etc."

The question of future installments and a judgment therefor would not have been presented in the action, as originally brought, had not the United States moved the Court to require the beneficiary to intervene in the action that her rights might be adjudicated therein (R. 2). This motion was sustained and the petition of intervention filed with the result heretofore stated. It would appear that in as much as the statute provides that all persons having or claiming an interest in the insurance may be made a party to the action, that in the event those parties in interest were brought before the Court, the Court would have jurisdiction to adjudicate the rights of any and all such claimants as those rights should appear. This would seem to be particularly true in the instant case for the added reason that the United States, who now complains of this adjudication, was entirely responsible for the presentation of the question to the Court in the first instance and is therefore placed in the position of having by affirmative action required the Court to establish rights which when thus established are complained of on the grounds that the Court was without authority to so act. We submit that *United States vs. Napoleon*, 296 Fed. 811; *United States vs. Jackson*, 34

Fed. 2nd 241; *United States vs. Lyke,* 19 Fed. 2nd. 876, are distinguishable from the instant case for the reason that the original plaintiffs were seeking the establishment of personal rights in insurance contracts which might accrue to them after the original action was brought and for the further reason that in the Lyke and Jackson cases claimants were in life and their status with reference to the insurance contract subject to change in the future.

The rights of all the parties to the insurance contract were definitely settled by, and the contract itself matured with, the death of the assured.

Cumings vs. United States, 34 Fed. 2nd, 284.

The liability of the United States was definitely established. The supplemental judgment with reference to the payments due in the future did not in any way disregard or contravene the terms of the contract, nor did it prejudice the position or alter the liability of the United States with reference thereto. The supplemental judgment provided (R. 3) that payment of future monthly installments be made at the rate of $57.50 per month until the unpaid balance due upon the contract had been satisfied.

United States cannot complain of that which they by affirmative action are responsible for. No rule of law is violated by the judgment in reference to future installments in the instant case and the liability of the United States has in no way been affected by the action complained of.

III.

In case of a finding and judgment in favor of the plaintiff and intervener interest is allowable against the United States upon monthly installments from the date they are found to be due.

As stated by the Circuit Court of Appeals in the certificate (R. 4) there is no dispute with the rule announced by this court in the case of *Seaboard Air Line Ry. vs. United States,* 261 U. S. 299, and *Boston Sand and Gravel Co. vs. United States,* 278 U. S. 41. Clearly the claim for interest in the case at hand is founded on the contract of insurance. It can not be considered, solely, as falling within a stated exception to the above rule, but must also be considered in the light of the legal status of the contract and the liabilities created thereunder.

Interest has been allowed against the United States in cases of condemnation of property under the theory of "just compensation" as expressed in the 5th Amendment.

Seaboard Air Line vs. United States, 261 U. S. 299.

Rogers vs. United States, 246 U. S. 338.

Phelps vs. United States, 274 U. S. 341.

Monongahela Navigation Co. vs. United States, 148 U. S. 312.

Likewise in cases wherein interest has been considered as an element of damages due by reason of seizure in admiralty, marine collision and the retention of money or property.

United States vs. The Neustra Senora, 108 U. S. 92.

The Paquette Habana, 189 U. S. 453.
United States vs. The Thekla, 266 U. S. 328.
United States vs. McKee, 91 U. S. 442.
United States vs. North Carolina, 136 U. S. 211.

That interest can ever be allowed against the United States is therefore settled as a matter of law in the affirmative.

The unpaid installments constituted money detained by the United States; was a debt definitely established and therefore subject to interest for the time detained. In the case of United States vs. North Carolina, 136 U. S. 211, this Court stated:

> "Interest when not stipulated for by contract or authorized by statute is allowed by the Courts as damages for the detention of money or property or of compensation to which the plaintiff is entitled."

In the case of *Boston Sand and Gravel Co. vs. United States,* 278 U. S. 41, this Court, distinguishing between pure damages resulting from a collision and interest on those damages, announced the above rule, with which there is no dispute, and which is familar to this Court. The Court also stated in this case that interest was not an element of damages and said further:

> "It might be in case of the detention of money. But this is not a claim for the detention of money, nor can any money be said to have been detained."

The liability of the United States under the contract of insurance was clearly defined as to amount and manner of payment. The conditions upon which payment would be made were clearly expressed. Payments which

should have been made to the assured under the contract have been detained and used by the Veterans' Bureau. This Bureau has received an income from these funds by reason of investments made by the Bureau. The Report to Congress of the United States Veterans' Bureau for year ending June 30, 1929, discloses on Page 106, Table No. 61, the scope of the financial activities of the Insurance Division of the Bureau and the income derived from interest on bonds it owns. The Bureau is therefore placed in the position of refusing to allow interest upon funds detained by it and upon which it has received a return by way of interest.

With particular reference to the question of War Risk Insurance and the allowance of interest upon claims thereunder this Court has in the case of Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, answered the question presented in the affirmative. We submit herein that the rule announced in that case is fairly applicable to the case here presented and that interest upon unpaid installments should be allowed. The rule has been applied in Gianakouras vs. United States, 33 Fed. 2nd 936 (D. C.) and a careful analysis made therein.

The *Standard Oil* case was based upon a claim arising under two contracts of insurance covering a marine risk and issued under the authority of the Act of September 2, 1914. This Court said:

> "When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might me sued, it must be assumed to have accepted the ordinary incidents of suits in such business."

The statute being silent as to interest and no exception made with reference to it, therefore interest, as an ordinary incident of the business engaged in, and in suits pertaining thereto, should be allowed against the United States in the same measure and on the same theory as it would be in the case of a private litigant. When the United States is in the position of a private litigant by reason of its own conduct or by operation of law, it is subject to the same rules and conditions that would be common to and imposed upon such litigants.

Law vs. United States, 69 Sp. Ct. L. Ed. 401.

The question of interest is the heart of the matter before this Court, as it was in the Circuit Court of Appeals. It is the contention of the plaintiff and intervener that no reason in fact or in law exists creating a distinction between marine and human risks insured under the same Act against the hazards of war.

The Act of September 2, 1914, outlined the marine insurance business of the government and contemplated its operation agreeably to the dictates and business principles of regular commercial companies. It provided for the machinery necessary to carry out the stated purpose and provided that suits could be brought in the event of a disagreement, jurisdiction of which was conferred upon the United States District Court sitting in Admiralty (Sec. 5 Art I - 38 Stat. 711 9 Fed. St. Ann 1303). The Act neither by direct statement nor implication assumes the business to have been entered into for gain or profit, but rather contemplated a loss and provided that premiums, salvage, etc., be paid to the credit of the ap-

propriation made for the payment of losses. (Sec. 3 Art. I 38 Stat. 711-9 Fed. St. Ann. 1303).

The Act of October 6, 1917, amending the original act of September 2, 1914, enlarged the scope of the insurance activities to include those in the military service of the United States. With reference to war risk life and disability insurance the provisions were practically identical with those relating to marine insurance. The privilege of obtaining the insurance was granted; terms and conditions outlining and specifying liability thereunder were definitely established; it was declared to be a contract of insurance for which a premium was paid and it was specified that "All calculations shall be based upon the American Experience Table of Mortality" (Sec. 402 Art. IV, 9 Fed. Stat. Ann. 1326-40 Stat. 398). The provision as to suit in the event of disagreement was also made (43 Stat. 613). True no profit was contemplated from life and disability insurance nor was it in the case of marine insurance. A perusal of the Report of Director, United States Veterans' Bureau 1929, Table 61, P. 106, shows the life and disability insurance phase of the activities of the Bureau to be on a sound and desirable financial basis. We believe the question of the operation of either branch of the insurance business for gain is not material or relevant to the question raised here. Whether interest should be allowed on these contracts is a question going to the nature of the business itself and not determinable upon the result of the operation of that business with respect to profit and loss.

In *United States vs. Lyke,* 19 F 2nd 876, the Court followed the rule that no interest could be recovered against the United States in the absence of a stipulation

to pay it or a statute allowing same. In not following the *Standard Oil* case the Court stated that the reasoning therein did not apply; the contract of insurance was not a business contract but was one in the nature of insurance and pension.

The Act of October 6, 1917, was enacted in three Articles amending the Act of September 2, 1914, which was known as Article I. As stated in the Amending Act, Article II dealt with Allotments, and Family Allowance of those in military service; Article III pertained to and established compensation for death and disability incurred in line of military duty; Article IV enlarged upon Article I and provided for war risk life and disability insurance for the added protection of the insured and his dependents, in addition to compensation as already provided for in the preceding article. If the term "pension" can be used at all we submit it should be used with reference to compensation and not insurance. Compensation was a gratuitous benefit conferred without cost to those in service and easily distinguished from insurance for which a premium was paid for the benefit conferred.

In the case of *United States vs. Jackson,* 34 Fed. 2nd 241, the Court followed the Lyke case, stating:

> "In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. On the contrary in issuing life and disability insurance policies under the provisions of the Amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form. Furthermore under such policies the payments to be made in case

of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension."

There is nothing extraordinary in life and disability term insurance. It is a very common form of insurance and the policy is in no sense unusual in form. We do not believe the Supreme Court in the *Standard Oil* case limited the holding to marine insurance—surely it did not in words as the Court said "went into the insurance business.'

We contend the distinctions drawn by the Courts in the Lyke and Jackson cases are fallacious and do not logically or in law exist. It is the business itself that is the test of liability in this matter and not the manner or form in which it is administered and its purpose effected.

In *State Bank & Trust Company vs. United States,* 16 Fed. 2nd 439 C. C. A. Certiorari denied in 274 U. S. 737, the Court said:

> "It is also urged that the insurance was a gratuity by the Government and hence that its limitations as indicated by the statute should be more strictly enforced, and with the minimum of regard for the soldier's interest. This claim does not impress us as justifying any peculiar rules of construction. These policies were gratuitous only in that they exacted a smaller cash premium than was required in standard policies; but this element of gratuity may well be considered to be compensation to the soldier in addition to the monthly cash payments for the services rendered and the risks incurred by him to or for the Government. We are inclined to approach the subject as we would any other between insurer and insured."

The installments unpaid constituted a debt of the United States and a liability thereunder for interest on money detained by the United States.

The business of insuring war risks as indulged in by the United States was strictly speaking the business of insurance, subjecting the insurer to all ordinary incidents of the business and suits relating thereto, unless specifically excepted by statute. Interest is one of these ordinary incidents. The status of those insured is equal and free from distinctions and discriminations in favor of one class and prejudicial to another. The rule announced in the case of *Standard Oil Company vs. United States* supra is comprehensive of the question here presented, is free from any ambiguity and succinctly states the law with reference to interest on war risk contracts. The distinctions created in the *Lyke* and *Jackson* cases are fallacious both as a matter of fact and a matter of law. We submit the rule of the *Standard Oil* case governs and should be applied.

IV.

In case of a finding and judgment in favor of plaintiff and intervener costs may be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose:

Vol. 44, Part 1, Statutes at Large, Sec. 870, Page 945 is as follows:

> "Whenever a writ of error, appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court of appeals, either by the United States or by direc-

tion of any department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted. (R. S. Sec. 1001; Mar. 3, 1911, c. 231, Secs. 118, 239, 36 Stat. 1131, 1167)."

In the case, *State Bank & Trust Company vs. United States*, 16 Fed. 2nd 439 (C. C. A.) the Court said:

"The Bureau has a fund from which not only the principal sum but in cases like this the costs could be properly paid and on that understanding full costs will be awarded."

Also Gianakouras vs. United States, 33 Fed. 2nd 936 (D. C.)

Luckenback vs. The Thekla, 45 S. C. 112.

Paquette Habana, 189 U. S. 453.

United States vs. The Neustra Senora, 108 U. S. 92.

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CONCLUSION

It is respectfully submitted that the Questions Certified should be answered in the affirmative.

Respectfully submitted,

CLARENCE T. SPIER,

CHARLES BATTELLE,
Attorneys for Plaintiff and Intervener.